



# Earth Negotiations Bulletin

PrepCom 2

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## PREPCOM 2 HIGHLIGHTS: TUESDAY, 6 SEPTEMBER 2016

On Tuesday, 6 September, plenary convened throughout the day to continue discussions of possible areas of convergence and areas for further discussion on area-based management tools (ABMTs), and consider such areas for environmental impact assessments (EIAs). Plenary also heard a partial report from the informal working group on capacity building and technology transfer (CB&TT), that will be continued on Wednesday.

### AREA-BASED MANAGEMENT TOOLS

AUSTRALIA highlighted UNFSA provisions on: the objective of long-term conservation and sustainable use; general principles; the articulation of the precautionary approach and guidance on its application in the given context; and broader cooperation with RFMOs in Article 8 from which the PrepCom can draw upon, rather than Article 7 on compatible measures, which are specific to highly migratory and straddling stocks.

### ENVIRONMENTAL IMPACT ASSESSMENTS

Following the circulation of a note containing the Chair's understanding of possible areas of convergence of views and possible issues for further discussion emanating from the informal working group on EIAs, Facilitator Lefeber offered an oral report from the working group. Chair Charles highlighted as possible areas of convergence: EIAs for activities in ABNJ that may impact ABNJ, and transboundary EIAs (TEIAs) for activities in ABNJ that may impact areas within national jurisdiction; the need to avoid undermining or duplicating existing instruments and frameworks; UNCLOS Article 206 (EIA) as the point of departure for thresholds and guidance; transparency and dissemination of assessment reports; the need to take into account SIDS' and developing countries' capacity needs; and public availability of EIA reports. He also included procedural steps for EIAs and TEIAs among areas of convergence, such as: screening; scoping; access to information at the global level, including effective stakeholder participation and consultation with adjacent coastal states; coordination with sectoral and regional organizations; and independent scientific review at the global level, consideration and publication of reports. He highlighted as possible issues requiring further discussions: the coverage of activities in areas within national jurisdiction that may impact ABNJ; the consideration of transboundary impacts as part of EIAs or as a separate procedure; coastal states' role in TEIAs for ABNJ activities that may impact areas within national jurisdiction; thresholds and criteria for identifying activities requiring EIAs; a positive or

negative list of activities, criteria, or a combination of both; a list of prohibited activities; EIA costs being borne by the activity proponent; stages for international involvement or oversight at the global level; monitoring, review, compliance and liability provisions; the need for an EIA and SEA central repository and its functions; the content of assessment reports; the inclusion of SEAs in the ILBI; linking SEAs to MSP; and concept, scope, and procedural aspects of SEAs.

The AFRICAN GROUP requested including "African countries" in relation to the need to consider the capacity needs of developing countries in conducting EIAs. The EU, opposed by FSM, proposed considering SIDS' and developing countries' capacity under the package element of capacity building, with CARICOM emphasizing its cross-cutting nature. The FSM called attention to performing EIAs jointly as meaningful participation, rather than building capacities, of developing countries.

**PRINCIPLES AND APPROACHES:** The G-77/CHINA, supported by CANADA, requested the inclusion of guiding principles and approaches among the areas of convergence. The G-77/CHINA also suggested including language on EIAs contributing to BBNJ conservation and sustainable use, as well as the precautionary approach, among possible areas of convergence. GREENPEACE suggested as a point of convergence that "EIAs should be based on generally agreed principles, including the precautionary approach, ecosystem-based management, transparency and stewardship, and applying best available science."

**EXISTING INSTRUMENTS:** CHILE proposed reference to the role of the ISA among existing instruments and frameworks. COSTA RICA preferred that existing instruments "guide and/or inform" the development of EIAs and TEIAs, arguing that the ILBI should not depend on these instruments. NORWAY preferred language that existing instruments should guide "and" inform the development of EIAs and TEIAs, and cautioned against considering less valuable inputs from organizations without a conservation mandate. The EU, supported by ICELAND, favored using existing frameworks to guide and inform the development of "procedures," rather than "measures," for EIAs and TEIAs.

With regard to language noting that "existing instruments and frameworks should not be undermined and duplicated," ARGENTINA, supported by the FSM, COSTA RICA and MOROCCO, but opposed by ICELAND, the RUSSIAN FEDERATION, JAPAN and VENEZUELA, recommended deleting reference to duplication, favoring the language contained in General Assembly Resolution 69/292. COSTA RICA, supported by VENEZUELA, suggested compromise language stating that existing instruments and frameworks

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should not be “undermined, avoiding duplication.” Chair Charles suggested “parking” reference to “existing instruments and frameworks, in particular, UNCLOS, as well as procedures under existing bodies should not be undermined, avoiding duplication,” with ICELAND requesting a written version of the amended list of possible areas of convergence of views.

**EIA THRESHOLDS:** PSIDS, supported by CARICOM, called for further discussing a lower threshold for areas identified as significant, with NEW ZEALAND recommending the identification of practical ways to address this. JAPAN favored using language from UNCLOS Article 206. Pointing to a recent IUCN report on ocean warming, IUCN noted that EIA obligations and related state responsibility should be informed by UNCLOS obligations, including on preventing transboundary impacts and limiting sovereign rights to exploit natural resources in order to protect the marine environment.

The US suggested, supported by AUSTRALIA and opposed by COSTA RICA, IRAN, ERITREA, CAMEROON and the FSM, referring to “significant impact,” rather than any “impact,” consistent with UNCLOS. COSTA RICA cautioned against prejudging EIA thresholds. CAMEROON underscored that criteria for significance are not defined. VENEZUELA stressed the need for an assessment to set a threshold, supporting performing EIAs for all activities. The US then proposed that the ILBI address EIAs for activities in ABNJ that may have “an impact that reaches a particular threshold,” supported by JAPAN and AUSTRALIA, with AUSTRALIA underscoring, *inter alia*, CBD Article 14 (impact assessment) and Principle 17 of the Rio Declaration on the Environment and Development (EIA). COSTA RICA suggested using “the agreed threshold.” The US preferred referring to “an agreed threshold,” and delegates agreed to “parking,” as an area of convergence, that “an ILBI will address EIAs for activities in ABNJ that may have an impact that reaches an agreed threshold.”

**TEIAs:** ALGERIA called for considering the UN’s role in TEIAs for activities in ABNJ, as the UN administers states that are under foreign occupation or not yet fully independent. The AFRICAN GROUP underscored the need to respect state sovereignty in any discussion on whether an ILBI should cover activities within national jurisdiction that may have an impact in ABNJ. IRAN suggested as a possible area of convergence the need to respect states’ sovereign rights over resources under national jurisdiction.

The EU, with JAPAN and CHINA, recommended further discussion of TEIAs. NEW ZEALAND suggested considering TEIAs as part of EIAs, rather than separately. The US noted divergence on the need for a separate TEIA procedure under the ILBI. BANGLADESH considered TEIAs already covered under UNCLOS Article 145 on harmful activities in the Area. Delegates agreed to include references to TEIAs among issues requiring further discussion.

**SEAs:** ERITREA proposed clarifying that SEAs should also cover fiscal policies.

**INSTITUTIONAL ARRANGEMENTS:** COSTA RICA called attention to convergence on the need for monitoring and review of EIAs under the ILBI. GREENPEACE suggested as a point of convergence: “how EIAs are reviewed, by whom, which organization or state, and how the revision should be conducted.” CAMEROON supported an active role for international mechanisms, ensuring administrative and technical surveillance after EIAs have been conducted. NEW ZEALAND noted convergence on a clearinghouse mechanism. CHILE called for a peer-review process for EIAs to allow for transparency and accountability. ERITREA stressed the importance of a global governing body to determine whether a planned activity could occur, as well as to monitor and enforce EIAs in ABNJ.

NORWAY noted a lack of convergence on the need for: an international procedural layer for coordination with existing sectoral and regional organizations, supported by ICELAND;

and an independent scientific review of reports, pointing to flag state responsibility to conduct assessments. CANADA, JAPAN, ICELAND and CHINA favored further discussion of procedural steps for EIAs, with the US recommending discussion of the need for “any” international involvement or oversight, and AUSTRALIA proposing discussion on the timing of involvement, if needed. SINGAPORE, supported by AUSTRALIA, suggested removing references to the global level, in the procedural steps.

**Consultations:** JAPAN called for further discussing the procedural steps for EIAs, and, supported by ARGENTINA, SINGAPORE and ICELAND, modalities for stakeholder consultations, including stakeholder identification. The EU, opposed by AUSTRALIA, ARGENTINA and the FSM, proposed consulting with “relevant states,” rather than adjacent coastal states, for EIAs; and further discussing procedural steps concerning independent scientific review, consideration and publication of reports. SWITZERLAND, supported by PARAGUAY, cautioned against distinguishing between adjacent coastal states and land-locked countries. SINGAPORE suggested compromise language on “effective participation of stakeholders and consultation with relevant states, including adjacent coastal states.” ERITREA highlighted the need to consult communities with customary and traditional rights on coastal and marine resources.

IUCN emphasized that: the principle of common concern is applicable to biodiversity conservation; “we are all stakeholders,” including industry, scientists, NGOs, and children; and the PrepCom could draw lessons from the ISA’s online public consultations on draft regulations for the exploitation of deep seabed minerals, as well as from national EIA public consultation processes such as in the US.

**Reporting:** BANGLADESH highlighted that publicly available reports are a requirement under UNCLOS Article 205 (publication of reports). IRAN recommended that EIA reports be made publicly available for transparency purposes. VENEZUELA noted that EIA reports are a form of capacity building, and supported parking this issue. IRAN and ERITREA suggested that consequences of negative EIA reports could be the discontinuation of proposed activities. The FSM proposed that the assessments could be reassessed and the proponent allowed to propose alternative activities. The US underscored that the need for discussion on consequences of EIA reports is still to be negotiated.

## IN THE CORRIDORS

PrepCom delegates returned to plenary after a long weekend ready to discuss environmental impact assessments, with a 2:1 ratio of points of divergence and those of convergence seemingly emerging from the Chair’s written note. The ratio appeared to fluctuate in the ensuing discussions, with some arguing that a convergence on monitoring and review of EIAs had been reached, and others questioning the need for any international oversight at all. Oscillations were also detected with regard to transboundary EIAs and with stakeholder consultations.

Meanwhile, several observers remarked the quasi-silence on strategic environmental assessments (SEAs), with some hypothesizing that delegations may simply have ran out of time in their preparations for PrepCom 2, and others reasoning that this is a “newer” technical concept in the BBNJ context. “But these measures have been in place for years,” reacted one veteran. “We need to be at the head of the game, not playing catch-up!” Well-informed observers, however, left Conference Room 1 at the end of the day wondering whether SEAs in ABNJ might be a completely different “game” than their framing and handling in domestic frameworks. In all events, they opined, SEAs will require a lot of creative thinking in the next intersessional period.